

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ANDREAS GUSTOV RINDFLEISCH, individually
and as Administrator of the Estate of Andreas Gustov
Rindfleisch IV; BETTY GRAF; ANDREAS GUSTOV
RINDFLEISCH, III; BRENDA LEE LOERZEL;
DAVID GRAF, and MARTIN RINDFLEISCH,**

Plaintiffs,

v.

**9:09-CV-824
(FJS/RFT)**

**LESTER N. WRIGHT, M.D., M.P.H. Chief
Medical Officer for the New York State Department
of Correctional Services; DAVID F. NAPOLI,
Superintendent of the Southport Correctional
Facility; JOSEPH HALUSKA, D.O., Medical
Director at the Southport Correctional Facility;
CATHY FELKER, Nurse Administrator at the
Southport Correctional Facility; LISA MARIE
HAYTH, Dental Hygienist at the Southport
Correctional Facility; and ANGELA M. GORG,
R.N., Nurse at Southport Correctional Facility,**

ATTORNEYS

OF COUNSEL

KOOB & MAGOOLAGHAN
221 Devoe Avenue
Yonkers, New York 10705
Attorneys for Plaintiffs

JOAN MAGOOLAGHAN, ESQ.

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

ROGER W. KINSEY, AAG

SCULLIN, Senior Judge

ORDER

Plaintiffs are the family and administrator of the Estate of Andreas Gustov Rindfleisch IV

("Decedent"), who died while in the custody of the New York State Department of Correctional Services. They brought this action pursuant to 42 U.S.C. § 1983 and New York State common law, seeking compensatory and punitive damages against Defendants for their alleged deliberate indifference to Decedent's serious medical needs in violation of the Eighth Amendment and for their alleged violation of Decedent's family members' right to association and companionship under the First and Fourteenth Amendments. *See* Dkt. No. 1. Plaintiffs also asserted state-law claims of negligence and medical malpractice. *See id.*

On September 11, 2009, Defendants filed a motion to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Dkt. No. 15. Plaintiffs opposed that motion. *See* Dkt. No. 19. In a Report-Recommendation and Order dated August 27, 2010, Magistrate Judge Treece recommended that the Court grant in part and deny in part Defendants' motion. Specifically, he recommended that the Court grant Defendants' motion with respect to Plaintiffs' individual claims, Plaintiffs' state-law claims, and any claims against Defendants in their official capacity. *See* Dkt. No. 22. However, he recommended that the Court deny Defendants' motion to dismiss Plaintiffs' claim on behalf of Decedent for deliberate indifference against Defendants Hayth, Gorg, and Haluska and for supervisory liability against Defendants Wright, Napoli, and Felker. *See id.* Plaintiffs filed objections to Magistrate Judge Treece's recommendation that the Court grant Defendants' motion to dismiss their individual claims. *See* Dkt. No. 24.

In reviewing a magistrate judge's report and recommendation, the district court may decide to accept, reject or modify the recommendations therein. *See* 28 U.S.C. § 636(b)(1). The court conducts a *de novo* review of the magistrate judge's recommendations to which a party

objects. *See Pizzaro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). ""If, however, the party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error."" *Salamini v. Astrue*, No. 3:06-CV-458, 2009 WL 1794741, *1 (N.D.N.Y. June 23, 2009) (quoting [*Farid v. Bouey*, 554 F. Supp. 2d 301] at 306 [(N.D.N.Y. 2008)] (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007))). Finally, even if the parties file no objections, the court must ensure that the face of the record contains no clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quotation omitted).

As noted, Plaintiffs filed specific objections to Magistrate Judge Treece's recommendation regarding their individual claims and no objections regarding his other recommendations. The Court conducted a *de novo* review of the recommendation to which Plaintiffs objected and a clear error review of the remaining recommendations. Having completed the appropriate review, the Court hereby

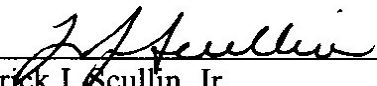
ORDERS that Magistrate Judge Treece's August 27, 2010 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss is **GRANTED in part and DENIED in part**; and the Court further

ORDERS that this action is referred to Magistrate Judge Treece for all further pretrial matters.

IT IS SO ORDERED.

Dated: March 27, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge